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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,914	03/10/2004	James W. Evans	10841-1	3384

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EXAMINER

HOPKINS, CHRISTINE D

ART UNIT	PAPER NUMBER
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3735

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/797,914

Applicant(s)

EVANS, JAMES W.

Examiner

Christine D. Hopkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12 July 2004</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

### **DETAILED ACTION**

1. The first page of the specification "claims the priority" of a Provisional Application and should apparently read --claims the benefit-- of a Provisional Application.

#### ***Claim Objections***

2. Claims 1, 5 and 10 are objected to because of the following informalities: At line 5, claim 1 ends with a semi-colon and should apparently end with a period. At line 1 of claim 5, "wherein the light comprised of LEDs" should apparently read --wherein the light is comprised of LEDs--. At line 2 of claim 10, "said shield blocking block the portion" should apparently read --said shield blocking the portion--. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Line 1 of claims 7-9 recites "the control box." It is unclear as to whether or not "the control box" of each claim is the same as "a controller" recited in claim 6 upon which claims 7-9 depend.

Claim 10 recites the limitation "the portion of ambient light." There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 4-7 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Widjaja et al. (U.S. Patent No. 5,599,274). Widjaja et al. (hereinafter Widjaja) disclose an audio-visual unit that aids in relaxation. Referring to claim 4, Widjaja teaches a visor **52** having translucent shield, or screen **56**, and spacer **53** capable of blocking ambient light outside a particular color spectrum based on the thickness of the spacer (col. 4, lines 27-40). The light emitted by the LEDs **54** (disposed within the visor **52**) is diffused by the "shield" **56** and may flash or "oscillate" to alert inhalation or exhalation. The intensity of the LEDs **54** may change or become greatly reduced, thus allowing the light to become "dim" (col. 6, lines 4-20).

With reference to claim 5, Widjaja teaches a light signal from the LEDs in the form of a flash, and further teaches an audio signal that mimics a binaural beat occurring every six seconds, or "approximately" every five seconds (col. 20, lines 27-32). Moreover, Widjaja teaches that the visual signal may have a frequency corresponding to that of the binaural signal (col. 21, lines 12-16), thus providing visual

stimulus by the LEDs that may signal the user to inhale and exhale at approximately five second intervals.

In view of claims 6-7 and 9, Widjaja teaches a control module **10**, connected to the user's device containing the LEDs, via cable **13** (col. 3, lines 48-56). The LEDs produce light according to a signal from the control module **10** (col. 5, lines 6-8). The control module **10** also has a "space," such as the area provided for LCD **20**, where a verse or prayer may be mounted (see Fig. 1).

Referring to claim 10, Widjaja teaches a visor **52** having translucent shield, or screen **56**, and spacer **53** capable of blocking ambient light outside a particular color spectrum based on the thickness of the spacer (col. 4, lines 27-40), and assumes the form of a pair of glasses (see Fig. 7). The light emitted by the LEDs **54** (disposed within the visor **52**) is diffused by the "shield" **56** and may flash or "oscillate" to alert inhalation, exhalation or meditation. The intensity of the LEDs **54** may change or become greatly reduced, thus allowing the light to become "dim" (col. 6, lines 4-20).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shealy et al. (U.S. Patent No. 5,242,376). Shealy et al. (hereinafter Shealy) disclose a

relaxation device and accompanying method, to be placed over the eyes and induce relaxation. With respect to claims 1-3, Shealy teaches a method for relaxation by flashing a light, such as a light-emitting diode, that emits a violet shade within the blue-green spectrum (col. 2, lines 17-26 and lines 63-68). While Shealy does not explicitly teach the light pulses as a cue, it would have been obvious to one having ordinary skill in the art to have utilized the flashing light of Shealy as a cue for the user to inhale or exhale.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Widjaja et al. (U.S. Patent No. 5,599,274) in view of Koyama et al. (U.S. Patent No. 6,053,936). Widjaja discloses the invention as claimed, see rejection supra; however Widjaja does not disclose a control box affixed to a belt of a user. Koyama et al. (hereinafter Koyama) disclose a portable light treatment device for imparting a soothing amount of light on a subject for treating disorders such as seasonal affective disorders. Regarding claim 8, Koyama teaches that the control module 51 affecting the light may be carried in any suitable manner by the subject, or held in a pocket of clothing (col. 5, lines 50-53), such as a belt. Thus, the control box “may” be affixed to a user’s belt. Therefore, at the time of the invention it would have been obvious to one having ordinary skill in the art to have modified the invention of Widjaja to be carried on the user, such as by affixing to a belt as taught by Koyama, for the purpose of making the invention portable.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,720,743 to Yano et al. discloses a lighting system provided to a subject for adjusting breathing patterns.

U.S. Pub. No. 2003/0195383 to Yoon discloses a system generating audio and light signals for affecting brain waves.

U.S. Patent No. 4,497,312 to Byrd discloses an invention for establishing breathing patterns.

U.S. Patent No. 6,092,906 to Olmstead discloses a screen in the form of glasses for emitting low-intensity, diffused light to a user's eyes for inducing a therapeutic environment.

U.S. Patent No. 6,212,135 to Schreiber discloses a device for affecting the respiratory cycle based on lighting cues.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine D. Hopkins whose telephone number is (571) 272-9058. The examiner can normally be reached on Monday-Friday, 7 a.m.-3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*CMB*

Christine D Hopkins  
Examiner  
Art Unit 3735

*Charles A Marmor, II*  
SPE, Art Unit 3735